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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,554	02/05/2004	James Trygve Wold	11747.2US01	5523
7590 11/17/2004			EXAMINER	
Merchant & Gould P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			DESAI, HEMANT	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/772,554	<b>Applicant(s)</b> WOLD ET AL.	
	<b>Examiner</b> Hemant M Desai	<b>Art Unit</b> 3721	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/5/04</u> | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Finke et al. (3266387).

Finke et al. discloses a method of folding bag comprising, providing an unfinished flat bottom bag (1, fig. 1) having a sleeve defining a longitudinal direction and a transverse direction, the bag comprising a mouth end and a bottom end and longitudinal gussets extending from the mouth end to the bottom end, the bottom end having an unfinished base portion, opening the unfinished base portion and extending the gussets transversely (see fig. 3), forming a fin (6,7, fig. 3) extending transversely across the unfinished base portion, and folding a first end (8, figs. 2-6) and a second end (9, figs. 2-6) of the fin against the unfinished base portion to form a base (see fig. 6) which meets all the claimed limitations.

Regarding claim 2, Finke et al. disclose that lifting of flap of the unfinished base portion (see fig. 2) prior to opening the unfinished base portion.

Regarding claim 3, Finke et al. disclose that inserting an opening mechanism (spreader 66, 67, figs. 8,11 and 12) into the unfinished based portion between two sides

of an end-most portion of the bottom end and moving the opening mechanism transversely to pull taught the end-most portion of the bottom end (see fig. 3).

Regarding claim 4, Finke et al. disclose that forming a crease between an end-most portion of the bottom end and the unfinished base portion (see fig. 5) and sealing (welding jaws 110, 11, fig. 8) the end-most portion of the bottom end to form fin.

Regarding claims 5-6, Finke et al. disclose the sealing device (welding jaws 110, 11, fig. 8) to weld the end-most portion of the bottom end to form the fin.

Regarding claim 7, Finke et al. disclose that the step of forming a fin extending transversely across the unfinished base portion comprises moving the unfinished bag in a transverse direction (see figs. 3-5), and the step of folding the first end and the second end of the fin against the unfinished base portion to form a base comprises moving the unfinished bag in a longitudinal direction (see fig. 6, also see col. 9, lines 45-56).

Regarding claims 9-10, Finke et al. disclose that the step of folding the first end and the second end of the fin against the unfinished base portion to form a base comprises folding the first end and the second end by passing each of the ends under an inner bar (guide rail 185, 186, fig. 18) and over an outer bar (folding rod 187, 188, fig. 18), and lifting each of the ends with the outer bars to form a fold between the inner bars and the outer bars.

Regarding claim 11, Finke et al. disclose that sealing the first end and the second end of the fin against the unfinished base portion to form the base and attaching a label over the base (see col. 11, lines 45-70).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finke et al. (3266387) in view of Wood (5165799).

Finke et al., as mentioned above, disclose all the claimed limitations, except for obtaining number of bags per minute. However, Wood teaches that average output in folding flat bottom bags ranges from 60-100 (see col. 1, lines 46-50). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to obtain 20-40 bags per minute as taught by Wood in the method of Wood for folding bag.

Regarding claims 16-18, Finke et al. disclose that forming a crease between an end-most portion of the bottom end and the unfinished base portion (see fig. 5) and sealing (welding jaws 110, 11, fig. 8) the end-most portion of the bottom end to form fin.

5. Claim 19 is rejected under 102(b) as anticipated by Cortopassi (6206570) or, in the alternative, under 35 USC 103(a) as obvious over Cortopassi (6206570).

Cortopassi discloses each and every structural element of the flat bottom bag set forth in claim 19, see fig. 2.

Cortopassi teaches that the flat bottom bag (10, fig. 2) comprises an interior defined by a sleeve having a mouth end for gaining access to the interior, an opposite

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bottom end, and gussets extending from the mouth end to the bottom end (see fig. 2).

The claimed phrase "the bag formed by" is being treated as a product by process limitations; that is, that the flat bottom bag is made by the process steps claimed in the claim 19. As set forth in MPEP 2113, product by process claims are NOT limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appear to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to applicant to show an obvious difference. See MPEP 2113.

Thus, even though Cortopassi is silent as to the process used to make the flat bottom bag, it appears that the product in the Cartopassi would be the same or similar as that claimed; especially since both applicant's flat bottom bag and the Cartopassi's flat bottom bag is made of a polymeric material.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M Desai  
Examiner  
Art Unit 3721

HMD

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal flourish extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700